

WIGGIN & DANA LLP
 450 Lexington Avenue
 Suite 3800
 New York, NY 10017-3914
 212-490-1700
 Joseph G. Grasso
 Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF NEW YORK

| | | |
|---|---|---|
| NEW STREAM COMMERCIAL FINANCE, LLC, | : | |
| | : | |
| Plaintiff, | : | Civ. No. 08 CV 3171 (AKH) |
| | : | (In Admiralty) |
| -against- | : | |
| | : | |
| STAR OF AMERICA, O.N. 973452, her engines, tackle, gear and appurtenances, etc., <i>in rem</i> ; MAJESTIC STAR, O.N. 1100715, her engines, tackle, gear an appurtenances, etc., <i>in rem</i> ; Majestic Voyages, Inc., <i>in personam</i> ; and Majestic Star, Inc., <i>in personam</i> , | : | AFFIDAVIT OF ATTORNEY STEVEN B. MALECH IN SUPPORT OF MOTION TO CONFIRM INTERLOCUTORY SALE |
| | : | |
| Defendants | : | |

State of New York :
 : SS. New York City
 County of New York :

Steven B. Malech, being duly sworn, deposes and says:

1. I am an attorney with the law firm of Wiggin and Dana LLP, which represents plaintiff New Stream Commercial Finance, LLC (“New Stream”), in connection with this matter. I make this Affidavit in Support of New Stream’s motion for confirmation of the interlocutory sale of the vessels Star of America, O.N. 973452, and Majestic Star, O.N. 1100715 (the “Vessels”).

2. Pursuant to the Order of Interlocutory Sale entered in this matter on May 22, 2008 (the "May 22 Order"), directing the sale of the Vessels, notice of the sale was published in the New York Times and the Newark Star Ledger on six consecutive days, from May 27, 2008, up to and including June 1, 2008. A copy of the Certification of Publication from the Newark Star Ledger is attached hereto as Exhibit A and a copy of the Certification of Publication from the New York Times is attached hereto as Exhibit B.

3. The sale was conducted by deputy supervisory United States Marshall Angelo D'Addario on June 2, 2008, at 1 p.m. in the lobby of the United States Court House, 500 Pearl Street, New York, New York, as directed by the May 22 Order and in accordance with the terms of the published notice.

4. During the time period between the entry of the May 22 Order and the sale on June 2, Wiggin and Dana received no inquiries concerning the sale of the Vessels.

5. I attended the sale and observed representatives of the United States Small Business Administration and several groups of individuals interested in watching the proceedings. The only bidder was New Stream, which submitted a credit bid of \$1.6 million for the Star of America and \$1.9 million for the Majestic Star.

6. Since the sale, neither I nor any other attorney at Wiggin and Dana has received an objection to the sale from any person, corporation or firm. To the contrary, Defendants, the United States Small Business Administration and Biltone, Inc. (the three-appearing parties) have expressly represented that they have no objection to the confirmation of the sale.

7. The principal amount owed by Defendants to New Stream is \$5,213,447.98, plus interest and costs.

8. New Stream is a citizen of the United States.

Steven B. Malech
Steven B. Malech

Subscribed and sworn to before
me this 6th day of June, 2008.

Jahaida Dari
Notary Public
My Commission Expires:

JAHAIADA DARI
Notary Public, State of New York
No. 01DA6065352
Qualified in New York County
Commission Expires Oct. 15, 2009

EXHIBIT A

AUCTIONS:

NOTICE OF SALE
 U.S. District Court - Southern
 District of New York (Docket
 No. 108-cv-03171-AKH)
 New Stream Commercial Fi-
 nance, LLC v. STAR OF
 AMERICA, O.N. 973452, et
 al. Pursuant to an Order of
 the Honorable Alvin K.
 Hellerstein and entered on
 May 22, 2008, I will sell at
 Public Auction to the highest
 bidder at the lobby of the
 United States Court House,
 500 Pearl Street, New York,
 County of New York, State
 of New York, New York, on
 June 2, 2008, at 1 p.m., the
 Vessels known as STAR OF
 AMERICA, O.N. 973452, and
 MAJESTIC STAR, O.N.
 1100715, as well as their en-
 gines, apparel, equipment,
 furniture, gear, tackle and
 appurteiances as both ves-
 sels now lie at Surfside 2
 Marina, Chelsea Piers, Pier
 60, New York, New York.
 Both Vessels will be
 auctioned together. If no
 bid for both Vessels equals
 or exceeds \$3.5 million,
 then each Vessel will be
 auctioned individually with a
 minimum bid of at least \$1.9
 million required for the MA-
 JESTIC STAR and of at least
 \$1.6 million for the STAR OF
 AMERICA. The successful
 bidder must immediately de-
 posit 10% of the bid with the
 Marshal and pay the remain-
 ing balance within 5 busi-
 ness days. Payment shall be
 by cashier's check, made
 payable to the United States
 Marshal. The sale is subject
 to confirmation by the Court
 after all funds are received
 by the Marshal. If the suc-
 cessful bidder fails to make
 the required payments within 5 business days, the Mar-
 shal shall give the next high-
 est bidder (above the mini-
 mum bid amount) another 5
 business days to complete
 the purchase at the second
 highest bid price (above the
 minimum bid). Failure to
 pay the balance in accord-
 ance with terms of sale will
 result in the forfeiture of
 monies deposited and, in
 the absence of any other bid
 above the applicable mini-
 mum, the property will be
 re-offered for sale. Notwith-
 standing the foregoing, the
 Plaintiff shall be allowed to
 bid up to \$5,213,447.98 with-
 out making any payment to
 the U.S. Marshal. The sale
 shall comply with all laws of
 the U.S., including the ci-
 tizenship requirements of Sec-
 tion 2 of the Shipping Act of
 1916 as Amended. Angelo
 D'Addario, United States
 Marshal.

STATE OF NEW JERSEY }
 COUNTY OF ESSEX } SS

Maura Malone

Being duly sworn, according to law, on h _____ oath sayeth that
 She is *Clark* _____ of the
 Star-Ledger, in said County of Essex, and that the notice, of
 which the attached is a copy, was published in said paper
 on the 5/27, 28, 29, 30, 31 day of May - June
 and continued therein for _____
 successively, at least once in each _____
 for (1) 6 day

Maura Malone

Sworn to and subscribed
 before me this 2
 day of June, 2008
Kathleen Sconzo
 NOTARY PUBLIC of NEW JERSEY

KATHLEEN SCONZO
 NOTARY PUBLIC OF NEW JERSEY
 MY COMMISSION EXPIRES NOV. 13, 2012

EXHIBIT B



620 8TH AVENUE • NEW YORK, NY 10018

 SEC. *BU* PG *20*

CERTIFICATION OF PUBLICATION

June 4 2008

Cathy Zilk

I, Cathy Zilk, in my capacity as a Principal Clerk of the Publisher of **The New York Times** a daily newspaper of general circulation printed and published in the City, County and State of New York, hereby certify that the advertisement annexed hereto was published in the editions of **The New York Times** on the following date or dates, to wit on

June 1 2008

Cathy Zilk

Approved:

Maria Pannullo

 THIS CERTIFICATION
NOT VALID
WITHOUT NYT RAISED SEAL



SEC. D PG 7

NOTICE OF SALE

U.S. District Court — Southern District of New York (Docket No. 1:08-cv-03171-AKH) — New Stream Commercial Finance, LLC v. STAR OF AMERICA, O.N. 973452, et al. Pursuant to an Order of Interlocutory Sale Issued by the Honorable Alvin K. Hellerstein and entered on May 22, 2008, I will sell at Public Auction to the highest bidder at the lobby of the United States Court House, 500 Pearl Street, New York, County of New York, State of New York, New York, on June 2, 2008, at 1 p.m., the Vessels known as STAR OF AMERICA, O.N. 973452, and MAJESTIC STAR, O.N. 100715, as well as their engines, apparel, equipment, furniture, gear, tackle and appurtenances as both Vessels now lie at Surfside 2 Marina, Chelsea Piers, Pier 60, New York, New York. Both Vessels will be auctioned together. If no bid for both Vessels equals or exceeds \$3.5 million, then each Vessel will be auctioned individually with a minimum bid of at least \$1.9 million required for the MAJESTIC STAR and of at least \$1.6 million for the STAR OF AMERICA. The successful bidder must immediately deposit 10% of the bid with the Marshal and pay the remaining balance within 5 business days. Payment shall be by cashier's check made payable to the United States Marshal. The sale is subject to confirmation by the Court after all funds are received by the Marshal. If the successful bidder fails to make the required payments within 5 business days, the Marshal shall give the next highest bidder (above the minimum bid amount) another 5 business days to complete the purchase at the second highest bid price (above the minimum bid). Failure to pay the balance in accordance with terms of sale will result in the forfeiture of monies deposited and, in the absence of any other bid above the applicable minimum, the property will be re-offered for sale. Notwithstanding the foregoing, the Plaintiff shall be allowed to bid up to \$5,213,447.98 without making any payment to the U.S. Marshal. The sale shall comply with all laws of the U.S., including the citizenship requirements of Section 2 of the Shipping Act of 1916 as Amended. Angelo D'Addario, United States Marshal.

5407-FEB 05

CERTIFICATION OF PUBLICATION

June 4 2008

I, Cathy Zike, in my capacity as a Principal Clerk of the Publisher of **The New York Times** a daily newspaper of general circulation printed and published in the City, County and State of New York, hereby certify that the advertisement annexed hereto was published in the editions of **The New York Times** on the following date or dates, to wit on

May 31 2008
Cathy Zike

Approved:

Maria Pannullo

THIS CERTIFICATION
NOT VALID
WITHOUT NYT RAISED SEAL



| | |
|--------|-------|
| SEC. 8 | PG 10 |
|--------|-------|

CERTIFICATION OF PUBLICATION

June 4 2008

NOTICE OF SALE

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5407-FEB 05

I, Cathy Zink, in my capacity as a Principal Clerk of the Publisher of **The New York Times** a daily newspaper of general circulation printed and published in the City, County and State of New York, hereby certify that the advertisement annexed hereto was published in the editions of **The New York Times** on the following date or dates, to wit on

May 28 2008
Cathy Zink

Approved:

Maria Pannullo

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|--|
| THIS CERTIFICATION NOT VALID WITHOUT NYT RAISED SEAL |
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SEC. *f* PG 7

CERTIFICATION OF PUBLICATION

June 4 2008

I, Cathy Zike, in my capacity as a Principal Clerk of the Publisher of The New York Times a daily newspaper of general circulation printed and published in the City, County and State of New York, hereby certify that the advertisement annexed hereto was published in the editions of The New York Times on the following date or dates, to wit on

May 30 2008

Cathy Zike

Approved:

Maria Pannullo

THIS CERTIFICATION
NOT VALID
WITHOUT NYT RAISED SEAL



620 8TH AVENUE • NEW YORK, NY 10018

SEC. D PG 7

CERTIFICATION OF PUBLICATION

NOTICE OF SALE

U.S. District Court — Southern District of New York (Docket No. 1:08-cv-03171-AKH) — New Stream Commercial Finance, LLC v. STAR OF AMERICA, O.N. 973452 et al. — Pursuant to an Order of Interlocutory Sale issued by the Honorable Andrew D. Hellestein and entered on May 22, 2008, I will sell at Public Auction to the highest bidder at the lobby of the United States Court House, 500 Pearl Street, New York, County of New York, State of New York, New York, on June 2, 2008, at 1 p.m., the vessels known as STAR OF AMERICA, O.N. 973452, and MAJESTIC STAR, O.N. 1100715, as well as their engines, apparel, equipment, furniture, gear, tackle and appurtenances as both vessels now lie at: Surfside 2 Marina, Chelsea Piers Pier 60, New York, New York. Both Vessels will be auctioned together. If no bid for both vessels equals or exceeds \$3.5 million, then each vessel will be auctioned individually with a minimum bid of at least \$1.9 million required for the MAJESTIC STAR and at least \$1.6 million for the STAR OF AMERICA. The successful bidder must immediately deposit 10% of the bid with the Marshal and pay the remaining balance within 5 business days. Payment shall be by cashier's check made payable to the United States Marshal. The sale is subject to confirmation by the Court after all funds are received by the Marshal. If the successful bidder fails to make the required payments within 5 business days, the Marshal shall give the next highest bidder (above the minimum bid amount) another 5 business days to complete the purchase at the second highest bid price (above the minimum bid). Failure to pay the balance in accordance with terms of sale will result in the forfeiture of monies deposited and, in the absence of any other bid above the applicable minimum, the property will be re-offered for sale. Notwithstanding the foregoing, the Plaintiff shall be allowed to bid up to \$5,213,447.98 without making any payment to the U.S. Marshal. The sale shall comply with all laws of the U.S., including the citizen ship requirements of Section 2 of the Shipping Act of 1916 as Amended. Angelo J. Addario, United States Marshal.

5407-FEB 05

Cathy Zike

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May 27 2008
Cathy Zike

Approved:

THIS CERTIFICATION
NOT VALID
WITHOUT NYT RAISED SEAL



SEC. *B* PG *7*

CERTIFICATION OF PUBLICATION

June 4 2008

I, Cathy Zike, in my capacity as a Principal Clerk of the Publisher of The New York Times a daily newspaper of general circulation printed and published in the City, County and State of New York, hereby certify that the advertisement annexed hereto was published in the editions of The New York Times on the following date or dates, to wit on

May 29 2008
Cathy Zike

Approved:

Maria Pannullo

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WITHOUT NYT RAISED SEAL